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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,915	02/19/2002	Patrick R. Connelly	BTI-5	3164
37211	7590	07/13/2004	EXAMINER GETZOW, SCOTT M	
BASCH & NICKERSON LLP 1777 PENFIELD ROAD PENFIELD, NY 14526			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/077,915

Applicant(s)

CONNELLY ET AL.

Examiner

Scott M. Getzow

Art Unit

3762

CC

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,18,19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindegren et al (5,454,837).

Lindegren shows a primary device housing 4, including a control circuit therein, a lead system 10, and a sensing and stimulation system shown in figures 2 and 3.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3,6,7,10,11,20,23,24,27,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindegren et al in view of Fitch et al (6,575,965).

Fitch shows, in figure 18, a mirror 173 that gets displaced when tissue that is contacting it moves. The displacement of the mirror is reflected thru fiber optic 175 to the proximal end of the lead where the resultant signal is processed. Col. 5, lines 8+ teach that the device, as well as other parameters can sense pressure. It would have been obvious to use such pressure sensors since such

have been shown to be effective in sensing characteristics of the tissue in contact therewith in an environment where minimal interference is produced. Further, Fitch teaches the use of laser light, which is typically used in medical applications because of its reliability and controllability.

5. Claims 4,8,21,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindegren et al in view of Takaki (6,283,632).

Col. 1, lines 65+ teaches that using a change in the refractive index of a cladding material is a well-known and reliable way to sense properties of tissue. Thus, it would have been obvious to use such a sensor with the device of Lindegren in order to facilitate the sensing of properties such as temperature.

6. Claims 5,9,22,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindegren et al in view of Weiss (5,132,529).

Weiss teach the use of an optical fiber strain gauge. It would have been obvious to use such a strain gauge with the device of Lindegren since such as been shown to be effective in measuring acceleration signals reliably and accurately.

7. Claims 12,13,14,15,29,30,31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindegren et al in view of Roberts et al (6,134,459).

Roberts teaches the use of an oxygen sensor which uses light reflected from the tissue of the patient's body, see especially figure 7. Such a light detector is in

common use in the medical arts and effectively and reliably senses the condition of the tissue that it is in contact with. Thus, it would have been obvious to use with the device of Lindegren et al.

8. Claims 16,17,33,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindegren et al and Roberts et al and further in view of Fitch et al.

To use the optical pressure sensing system of Fitch, with the combination of Lindegren and Roberts, would have been obvious for reasons mentioned supra.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

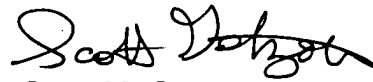
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Scott Getzow".

Scott M. Getzow  
Primary Examiner  
Art Unit 3762

smg